

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Telecommunications Carriers Eligible to)
Receive Universal Service Support)
)
Petition of True Wireless, LLC For)
Designation as an Eligible)
Telecommunications Carrier For Low)
Income Support Only)

WC Docket No. 09-197

**PETITION OF TRUE WIRELESS, LLC FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER FOR LOW INCOME SUPPORT ONLY**

Danielle Frappier
James M. Smith
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006
(202) 973-4242

Counsel for True Wireless, LLC

December 22, 2011

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SUMMARY

True Wireless, LLC ("True Wireless") seeks designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act") in order to serve qualifying low income consumers in specified non-rural areas of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia (collectively, the "Designated Service Areas") solely for the purpose of offering services supported by the federal Universal Service Fund's ("USF") Low Income program (*i.e.*, Lifeline and Link Up). True Wireless is already a Low Income-only ETC in five states, providing needed services to low income customers via wireless technology. True Wireless now seeks to provide wireless services in nine additional states whose public utility commissions ("PUCs") have affirmed that they lack jurisdiction over carriers providing service using wireless technology. As demonstrated herein, True Wireless meets all of the Commission's requirements for Low Income-only ETC designation, and such designation would serve the public interest in expanding the benefits of the Low Income program to desiring low income consumers in these states.

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True Wireless, LLC (“True Wireless” or “Company”) hereby submits this Petition, pursuant to 47 U.S.C. § 214(e)(6) of the Communications Act of 1934, as amended (the “Act”), and Section 54.201 *et seq.* of the Commission’s rules, for designation as an Eligible Telecommunications Carrier (“ETC”) for the sole purpose of qualifying for Lifeline and Link Up (“Low Income”) support for wireless service in non-rural areas of the following states, as further specified in **Exhibit A** hereto: Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia (collectively the “Designated Service Areas”). True Wireless does not seek ETC designation in any areas served by rural telephone companies, nor for any part of tribal lands. Further, True Wireless does not seek and will not accept High Cost support in any of the states in the proposed Designated Service Areas. In support of this Petition, True Wireless states as follows:

I. INTRODUCTION

True Wireless is a wireless telecommunications carrier serving the basic telephone needs of low income consumers. True Wireless provides Commercial Mobile Radio Services

("CMRS") to qualifying low income consumers in Arkansas, Maryland, Oklahoma and Texas, pursuant to which it receives Low Income funding.¹ As explained herein, the public interest would be served by granting this Petition, thereby enabling True Wireless to advance universal service by serving the basic and advanced communications needs of low income consumers in these states.

II. TRUE WIRELESS MEETS THE COMMISSION'S REQUIREMENTS FOR ETC DESIGNATION

True Wireless meets all the requirements for designation as an ETC in the proposed Designated Service Areas, as established under the Act and the Commission's rules.² In particular, True Wireless:

- is a common carrier (*see* 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d));
- will offer the services supported by federal universal service support mechanisms as defined in 47 C.F.R. § 54.101(a) (*see also* 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1); and 47 C.F.R. §§ 54.400-401);
- will use a combination of its own facilities and services provided by others to provide the supported services (47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1));
- will provide the supported services throughout its designated service areas (47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d));

¹ True Wireless also has been authorized to serve low income customers in Rhode Island, where it plans to commence operations shortly. Although ETCs may receive funding from both the High Cost and Low income programs, True Wireless has disavowed all High Cost funding, and thus receives only Low Income funding.

² The Commission has not required a five-year build out plan, described at 47 C.F.R. § 54.202(a)(1)(ii), for other petitioners seeking only Low Income funding. *See, e.g., TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al.*, Order, 23 FCC Rcd 6206, 6209 (2008); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, Order, 24 FCC Rcd 3381, 3395 (2009). Indeed, the rule itself calls for such a plan in order to demonstrate how the "receipt of high-cost support" will be used to improve the ETC's network. True Wireless herein seeks only Low Income and not High Cost funding.

- will advertise the availability of its universal service offerings and charges for such offerings using media of general distribution (47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2)); and
- will make available Low Income service to qualifying low income consumers (47 C.F.R. § 54.405).

A. The Relevant State Public Utility Commissions Lack Jurisdiction Over Wireless Services

True Wireless seeks to provide wireless services as an ETC to consumers throughout the proposed Designated Service Areas. Each state in the proposed Designated Service Areas – Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia – has declined or otherwise lacks jurisdiction over wireless services. Accordingly, pursuant to Section 214(e)(6) of the Act, True Wireless seeks designation as an ETC from the Commission.³

B. True Wireless Is A Common Carrier

True Wireless will provide CMRS throughout its requested Designated Service Areas, and as a CMRS provider, True Wireless is regulated as a common carrier under the Act (47 U.S.C. § 332(c)(1)) and the Commission’s rules (47 C.F.R. § 20.9), and therefore meets the ETC requirement (47 U.S.C. § 214(e)(1)) of being a common carrier.

C. True Wireless Offers The Services Supported By Federal Universal Service Support Mechanisms

True Wireless will provide each of the services supported by federal universal service support mechanisms upon designation as an ETC, as set forth below.⁴

³ 47 U.S.C. § 214(e)(6). Attached at **Exhibit B** hereto are statements and orders of the public utility commissions (“PUCs”) of the States comprising the proposed Designated Service Areas, in which the states disavow authority to consider ETC designation petitions of wireless carriers.

⁴ In its recent *Report and Order and Further Notice of Proposed Rulemaking* that, *inter alia*, established a new “Connect America Fund” (“CAF”) to replace the USF’s High Cost Fund on a phased schedule, the Commission decided to update the definition of supported services for carriers seeking High Cost funding to encompass “voice telephony services,” which it defined as “includ[ing] voice grade access to the public

1. Voice Grade Access to the Public Switched Telephone Network. Voice grade access permits a telecommunications user to transmit and receive voice communications with a minimum bandwidth of 300 to 3,000 Hertz. True Wireless will meet this requirement through its provision of mobile voice communications service and interconnection to the public switched telephone network.
2. Local Usage. Local usage is an amount of minutes of use provided free of charge. True Wireless commits to meeting this requirement by providing multiple calling plans, all of which offer a nationwide local calling area, permitting customers to call anywhere in the United States without toll charges.

switched network or its functional equivalent.” This new definition makes clear that the new CAF will support voice applications provided over broadband networks (hence the phrase “or its functional equivalent”). *In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (“*High Cost Fund/ICC Report and Order*”), Appendix A, amending 47 C.F.R. § 54.101(a). The Commission specifically adopted this definition to account for the new, advanced voice services supported by CAF funding. It expressly stated that references to new requirements for ETCs “do[] not include ETCs that are designated only for the purposes of the low income program.” *Id.* at note 105. The new rules do not become effective until December 29, 2011. *See* 76 Fed. Reg. 73830 (Nov. 29, 2011). As a result, the analysis in this Petition demonstrates True Wireless’s provision of the nine supported services specified under the existing 47 C.F.R. § 54.101(a). This is more than sufficient to demonstrate True Wireless’s provision of “voice telephony services” under the new rule as well, because the Commission found that “the modified definition simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform,” and that it simply was no longer necessary to individually list the nine supported services because many of them are “universal[ly provided] today.” *Id.* at ¶ 78. Accordingly, the nine services that were enumerated in the existing version of 47 C.F.R. § 54.101(a) will be substantively encompassed by the new term “voice telephony services.” In this regard, while the list of specific functionalities that the new definition “includes” does not contain each of the present nine supported services, by using the term “includes,” rather than setting out a definitive list, the new rule necessarily contemplates that functionalities not specifically listed may nonetheless be “included” within the term “voice telephony services” as well. While this new definition should not be applied to low-income-only ETCs such as True Wireless, if the Commission alters the supported services for Low Income-only ETCs, in its separate, pending rulemaking regarding the Low Income program (*In Re Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Notice of Proposed Rulemaking*, 26 FCC Rcd 2770 (2011), or otherwise, True Wireless will comply with any changes to the applicable rules.

3. Dual Tone Multi-Frequency (“DTMF”) Signaling Or Its Functional Equivalent.
DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. The Commission has recognized that, with respect to wireless carriers, it “is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.”⁵ True Wireless will meet this requirement by providing out-of-band digital signaling and in-band multi-frequency signaling for call set-up and termination.
4. Single Party Service Or Its Functional Equivalent. Single party service provides a dedicated message path for the length of a user’s particular transmission. With respect to wireless carriers, “single-party service” affords users a dedicated message path for the length of the user’s particular transmission. True Wireless will meet this requirement with respect to each of its service offerings.
5. Access To Emergency Services. Access to emergency services includes both access to 911 and E911 services to the extent the local government has implemented such services. True Wireless commits to meet this requirement by providing access to 911 service and meeting all requests for access to E911 service through local public service answering points (“PSAPs”).
6. Access To Operator Services. Access to operator services provides customer access to any automatic or live assistance to arrange for billing or completion, or both, of a telephone call. True Wireless commits to meet this requirement by providing access via a switch owned by True Wireless, which will route customers to True Wireless’s call center.

⁵ *In Re Federal-State Joint Board on Universal Service*, Report and Order (“Universal Service Report and Order”), 12 FCC Rcd 8776, at ¶ 71 (1997).

7. Access To Interexchange Service. Access to interexchange service provides subscribers with the ability to make and receive calls using an interexchange carrier's network. True Wireless commits to meeting this requirement by providing its customers with access to the ability to make and receive calls over interexchange network facilities. The Commission has determined that wireless carriers are not required to provide equal access to interexchange service, but may be required to provide equal access in certain special situations.⁶
8. Access To Directory Assistance. Access to directory assistance makes available to customers, among other services, access to information contained in directory listings. True Wireless meets this requirement by providing all of its customers with access to directory listings by dialing 411. True Wireless commits to meeting this requirement by providing access via a switch owned by True Wireless, which will route customers to True Wireless's call center.
9. Toll Limitation For Qualifying Low-Income Consumers. Toll limitation means both toll blocking and toll control, or, if a carrier is not capable of providing both toll blocking and toll control, then toll limitation is defined as either toll blocking or toll control. True Wireless commits to meeting this requirement by offering service on a prepaid, or pay-as-you-go, basis. As the Commission found in its grant of ETC designation to Virgin Mobile, "the prepaid nature of [a prepaid wireless carrier's] service offering works as an effective toll control."⁷ Moreover, True Wireless's calling plans do not distinguish between local or toll services, and

⁶ *Id.* at ¶ 78.

⁷ *In Re Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); etc.*, Order, 24 FCC Rcd 3381, 3394 at ¶ 34 (2009).

offer nationwide calling. True Wireless will provide this toll control to qualifying low income consumers at no additional charge. True Wireless will shortly have the ability to offer toll blocking and toll limitation through the switch owned by True Wireless.

D. True Wireless Will Use a Combination of Its Own Facilities and Services Provided By Others to Provide the Supported Services

True Wireless will provide the supported services using a combination of its own facilities, which includes a switch, and facilities and services provided by another carrier. True Wireless's facilities are physical components of the telecommunications network that are used in the transmission or routing of the service for which support is requested. Because these facilities include a switch owned by True Wireless (and other facilities set forth in CONFIDENTIAL Exhibit C), the method by which True Wireless provisions the supported services is consistent with the Commission's rules.⁸

⁸ See 47 C.F.R. § 54.201(d)(1), (e), (f). As discussed in note 4 *supra*, the Commission's new *High Cost Fund/ICC Report and Order*, to become effective on December 29, 2011, amends 47 C.F.R. § 54.101(a). The Commission expressly stated in that Order that references to new requirements for ETCs "do[] not include ETCs that are designated only for the purposes of the low income program." *Id.* at note 105. However, a subsequent *ex parte* letter by the Chief of the Wireline Competition Bureau suggested that "once this amendment to section 54.101 takes effect on December 29, 2011, a carrier seeking Lifeline-only ETC designation could not meet the facilities requirement of section 214(e)(1) if it only has facilities used for operator and directory assistance, and such ETC applicants would be required first to seek forbearance from the facilities-based requirement from the Commission." See letter from S. Gillett to M. Dortch, dated December 7, 2011 in WC Docket Nos. 11-42 & 03-109 and CC Docket No. 96-45 ("WCB Letter"). This interpretation of the impact of the new version of Section 54.101(a) appears nowhere in the *Report and Order*, and is squarely at odds with both the Commission's above-quoted disclaimer and its declarations that that the modified definition "simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform," and that it was no longer necessary to individually list the nine supported services because many of them are "universal[ly provided] today." The interpretation advanced by the WCB Letter has already prompted the filing of a Petition for Clarification and/or Reconsideration by one Low Income-only ETC, and has sparked an outcry by several others on the ground that the interpretation is neither supported by the *High Cost Fund/ICC Report and Order* nor justified by the *NPRM* or the record that led to its adoption. See Petition for Clarification and/or Reconsideration of Nexus Communications, Inc. in WC Dkt. 10-90 *et al.* (filed Dec. 14, 2011); *ex parte* presentation of the Link Up for America Coalition in WC Dkt. 11-42 *et al.*, dated Dec. 15, 2011. Without going unduly into detail, we note that the interpretation advanced by the WCB Letter is inconsistent with the open-ended language of the new rule, which lists certain functionalities that the

E. True Wireless Will Provide The Supported Services Throughout Its Designated Service Areas Upon Reasonable Request

True Wireless commits to provide the supported services throughout its Designated Service Areas, consistent with all applicable requirements. To the extent a potential customer requests service within True Wireless' Designated Service Areas, but outside its anticipated network coverage, True Wireless will, in cooperation with its carrier vendor, follow the six-step process specified in 47 C.F.R. § 54.202(a)(1). Specifically, True Wireless will determine if service can be provided with the cooperation of its vendor at reasonable cost to the requesting customer by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

F. True Wireless Will Advertise The Availability Of Its Universal Service Offerings And Charges For Such Offerings Using Media Of General Distribution

True Wireless will advertise the availability of, and charges for, the supported services using media of general distribution, in compliance with 47 C.F.R. § 54.201(d)(2). This advertising will occur through some combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct

overarching "voice telephony service" *includes*, without purporting either to require the specific functionalities that are included or to exclude other functionalities not listed. In addition, the interpretation advanced by the WCB Letter is inconsistent with the language of 47 U.S.C. § 214(e)(1)(A), which does not require that a prospective ETC own any particular facilities at all. Instead, the key concern of that provision is to avoid double-paying universal service support both to an underlying incumbent local exchange carrier that is receiving high-cost or low-income support, and to a reseller operating under Section 251(c)(4) of the Act that would obtain the ILEC's services for resale at a discount that already reflects the presence of universal service subsidies.

marketing, and the Internet. In addition, True Wireless will use appropriate media outlets to advertise its universal service offerings in a manner consistent with applicable requirements.

G. True Wireless Will Remain Functional in Emergency Situations

Under the Commission's rules (47 C.F.R. § 54.202(a)(2)), an ETC applicant must demonstrate its ability to remain functional in emergency situations. Since True Wireless will provide services in part through the use of facilities obtained from a major carrier vendor for wireless spectrum and other related wireless services, True Wireless will provide to its customers the same ability to remain functional in emergency situations as is currently provided by the vendor to its own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability to manage traffic spikes in the event of emergency situations.

H. True Wireless Will Satisfy Applicable Consumer Protection and Service Quality Standards

True Wireless will comply with all applicable consumer protection rules and service quality standards, in compliance with 47 C.F.R. § 54.202(a)(3). If designated as an ETC, True Wireless will provide service on a timely basis to requesting customers within the Designated Service Areas. Further, True Wireless will abide by the CTIA's Consumer Code for Wireless Service ("CTIA Code"). True Wireless has already adopted the CTIA Code and is committed to compliance with the CTIA Code throughout its service areas, including in those areas where it now seeks designation as an ETC.

I. True Wireless's Calling Plans Offer Local Usage Comparable to the Relevant Incumbent LECs' Plans

True Wireless's calling plans provide local calling capability comparable to that offered by the relevant incumbent local exchange carriers (ILECs) in the proposed Designated Service Areas, in compliance with 47 C.F.R. § 54.202(a)(4). True Wireless's calling plans do not

distinguish between local or toll services, and offer nationwide calling. Indeed, since True Wireless offers a much larger, nationwide calling area, its offerings are more attractive than the relevant ILEC calling plans.

J. True Wireless Acknowledges That the Commission May Require It to Provide Equal Access Under Certain Circumstances

The Commission has determined that wireless carriers are not required to provide equal access to interexchange service, but may be required to provide equal access in certain special situations.⁹ Pursuant to 47 C.F.R. § 54.202(a)(5), True Wireless acknowledges that it may be required to provide equal access within a designated service area if no other ETC is providing equal access in that area.

K. True Wireless Will Comply With The Commission's Lifeline and Link Up Certification and Verification Requirements

Sections 54.410 and 54.416 of the Commission's rules require Low Income ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline and Link Up program participation, respectively. True Wireless certifies and verifies consumer eligibility in accordance with all applicable Commission rules. Specifically, True Wireless verifies eligibility by obtaining customer self-certifications, signed under penalty of perjury. In addition, in instances where a consumer seeks to qualify based on an income-based criterion, he or she must furnish the acceptable documentation required under section 54.410(a)(2) of the rules.

III. DESIGNATION OF TRUE WIRELESS AS AN ETC IS IN THE PUBLIC INTEREST

True Wireless meets all of the Commission's requirements for designation as an ETC by providing all of the supported services, committing to serve all consumers throughout its

⁹ *Universal Service Report and Order* at ¶ 78.

Designated Service Areas, offering a Low Income service consistent with all applicable requirements, advertising the availability of its universal service offerings, and furthering the goals of the universal service program. Moreover, designation of True Wireless as an ETC is in the public interest because consumers will benefit from competitive pricing and new services, such as True Wireless' Low Income plan. As True Wireless expands its network into the proposed Designated Service Areas, consumers will benefit from a high level of service quality and more service options.

Access to wireless services is no longer a luxury but rather is a necessity for many economically disadvantaged Americans. Low income consumers are mobile and transient, often balancing multiple jobs and moving far more frequently than consumers with higher incomes, making wireless telecommunications the only technology that truly suits their needs in most cases. Because low income consumers spend less time during the day at a fixed location, and even less time at a fixed location with a phone available for their use, access to wireless telecommunications is of crucial importance to low income consumers.

Access to free or low-cost wireless service has become even more critical in light of the current economic downturn. As the unemployment rates both nationally and in the states in the proposed Designated Service Areas hover at near-historic modern highs, many Americans find themselves unemployed or underemployed, and needing to travel longer distances in their job searches and job training, as well as to travel to replacement and supplemental places of employment when jobs are found. Under these difficult and even tragic circumstances, mobility in communications has become even more crucial to low income consumers. For these consumers, "Lifeline" is more than the name of a program; it has become a literally accurate description of their need for mobile communications in finding and keeping jobs and their

connections to essential services. True Wireless will serve the particular needs of these consumers, who need ever-greater mobility in their telecommunications options and timely access to public services, including emergency services when needed.

True Wireless fulfills a critical role in the marketplace by ensuring that these low income consumers, who cannot afford the services provided by other wireless providers, can still access these important services. True Wireless's designation as an ETC will result in low income consumers having greater access to wireless telecommunications services in the proposed Designated Service Areas, thereby advancing the basic goal of preserving and advancing universal service.¹⁰ Indeed, True Wireless will pass through to its Low Income eligible customers all federal Low Income program discounts, and indeed will offer free as well as discounted pricing plans to qualifying low income consumers. Moreover, True Wireless engages in extensive outreach efforts. For example, True Wireless works directly with schools and community organizations to educate the community about the Low Income program, it holds community events that are advertised in local newspapers and on radio, and it provides 24/7 customer service to all customers. Designating True Wireless as an ETC will improve its ability to serve these customers, and thus will serve the public interest.

IV. CERTIFICATION FOR USE OF UNIVERSAL SERVICE FUNDS

True Wireless certifies that it will use federal low income universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, in accordance with 47 U.S.C. § 254(e).

¹⁰ See 47 U.S.C. § 254(b).

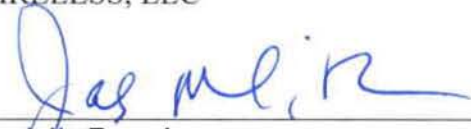
V. CONCLUSION

True Wireless respectfully requests designation as an ETC for the Designated Service Area for purposes of receiving federal Low Income universal service support.

Respectfully submitted,

TRUE WIRELESS, LLC

By:



Danielle Frappier
James M. Smith
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006
(202) 973-4242

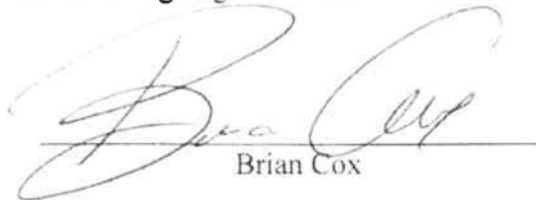
December 22, 2011

CERTIFICATION

I, Brian Cox, certify that I am Chief Executive Officer of True Wireless, LLC ("True Wireless"); that I am authorized to make this certification on behalf of True Wireless; that the foregoing petition was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information and belief.

I also certify that, to the best of my knowledge, True Wireless, including all officers, directors, and all persons holding five percent or more of the outstanding stock or shares (voting and/or non-voting) of True Wireless, is not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998.

I declare under penalty of perjury that the foregoing is true and correct.



Brian Cox

Executed this 20 day of December, 2011

E X H I B I T A

Proposed Designated Service Areas

Exhibit A

FCC State Service Areas and Discounts

Alabama

True Wireless will provide service for customers residing in the non-rural Alabama telephone exchange areas of BellSouth and CenturyLink.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of between \$6.45 and \$6.50 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.75 per customer; and an additional company discount of between \$3.55 and \$3.50 per customer.

Connecticut

True Wireless will provide service for customers residing in the non-rural Connecticut telephone exchange areas of Verizon.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of \$6.38 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$0.59 per customer; and an additional company discount of \$4.78 per customer.

Delaware

True Wireless will provide service for customers residing in the non-rural Delaware telephone exchange areas of Verizon.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of \$6.42 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.75 per customer; and an additional company discount of \$3.58 per customer.

Florida

True Wireless will provide service for customers residing in the non-rural Florida telephone exchange areas of BellSouth, CenturyLink, Verizon, and Windstream.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of between \$6.15 and \$6.50 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.75 per customer; and an additional company discount of between \$3.85 and \$3.50 per customer.

New Hampshire

True Wireless will provide service for customers residing in the non-rural New Hampshire telephone exchange areas of FairPoint Communications.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of \$6.14 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.75 per customer; and an additional company discount of \$3.86 per customer.

New York

True Wireless will provide service for customers residing in the non-rural New York telephone exchange areas of Verizon, TDS, Windstream, Citizens Telecommunications Company of New York, and Frontier Communications of New York.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of between \$6.38 and \$6.50 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.00 per customer; and an additional company discount of between \$4.37 and \$4.25 per customer.

North Carolina

True Wireless will provide service for customers residing in the non-rural North Carolina telephone exchange areas of AT&T, Frontier, CenturyLink, North State Communications, and Windstream.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of between \$5.40 and \$6.50 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of

\$1.75 per customer; and an additional company discount of between \$3.50 and \$4.60 per customer

Tennessee

True Wireless will provide service for customers residing in the non-rural Tennessee telephone exchange areas of AT&T, CenturyLink, and Citizens Telecommunications.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of between \$4.68 and \$6.50 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.75 per customer; and an additional company discount of between \$3.50 and \$5.62 per customer

Virginia

True Wireless will provide service for customers residing in the non-rural Virginia telephone exchange areas of Verizon.

True Wireless's subscribers will receive a total discount of \$13.50 through a combination of company discount and support from the federal Lifeline program, calculated as: Tier 1 support of between \$6.04 and \$6.50 per customer; Tier 2 support of \$1.75 per customer; Tier 3 support of \$1.75 per customer; and an additional company discount of between \$3.96 and \$3.50 per customer.

E X H I B I T B

Affirmative Statements of State Commissions



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
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WALTER L. THOMAS, JR.
SECRETARY

ALLTEL COMMUNICATIONS, INC.,
Applicant

**APPLICATION: For designation as an
eligible telecommunications carrier in
the State of Alabama.**

DOCKET 30263

ORDER DENYING ALLTEL'S PETITION FOR RECONSIDERATION

BY THE COMMISSION:

I. INTRODUCTION AND BACKGROUND

Pursuant to order entered in this cause on January 9, 2007, the Commission determined as a threshold matter that it lacked the jurisdiction necessary to act on the October 12, 2006 Application of Alltel Communications, Inc. ("Alltel") for designation as an eligible telecommunications carrier ("ETC") for certain specified areas of Alabama. Alltel sought ETC designation for the rural telephone company study areas in Alabama located partially in the territory where Alltel is a licensed provider of cellular mobile radio service ("CMRS").¹ Alltel further sought to redefine the study areas of the affected rural telephone companies in Alabama in its October 12, 2006 Petition.

The January 9, 2007 Order concluding that the Commission lacked jurisdiction to act on Alltel's Application for ETC status was based on a number of considerations. In particular, the Commission noted that on March 12, 2002, an order was issued in Docket U-4400 wherein the Commission determined that it did not have jurisdiction over CMRS providers and, therefore, lacked jurisdiction to designate CMRS providers as ETCs pursuant to §214(e) of the Act. The Commission observed that its finding in that regard was based on an earlier conclusion reached

¹ Alltel's request was made pursuant to §214(e)(2) of the Communications Act of 1934, as amended (the "Act").

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by the Commission in an Order entered on March 2, 2000 in Docket 26414 wherein the Commission determined that the provisions of Code §§40-21-120(1)(a) and (2) dictate that the Commission has no authority to regulate CMRS providers and other providers of Commercial Mobile Service ("CMS").

The Commission further noted in its January 9, 2007 Order that Congress expressly enacted §214(e)(6) of the Act to provide carriers like Alltel who are not subject to a particular state's jurisdiction an identifiable means of being designated as an ETC in such states. The Commission also determined that, contrary to the arguments of Alltel, the Alabama Legislature's 2005 passage of the Communications Reform Act² and §37-2A-7 thereof did not authorize the Commission to assume jurisdiction over CMRS providers for the purposes of administering federal Universal Service requirements in Alabama. The Commission accordingly advised Alltel to submit its application for ETC designation to the FCC pursuant to §214(e)(6) of the Act.

On or about February 13, 2007, Alltel filed a Petition for Reconsideration in this cause urging the Commission to revisit the conclusions reached in its January 9, 2007 Order and to thereafter grant the application of Alltel for designation as an ETC in Alabama. As in its original petition, Alltel again asserted in its Petition for Reconsideration that Code §37-2A-7 requires the Commission to exercise jurisdiction over Alltel's application. Alltel further asserted that the Commission's reliance on its previous orders in Dockets 26414 and U-4400 was misplaced given the change in law brought about by the enactment of Code §37-2A-7.

Alltel additionally noted that staff from the Florida Public Service Commission had recently opined to the Florida Public Service Commissioners that a newly enacted provision in Florida law very similar to Alabama Code §37-2A-7 authorized the Florida Commission to

² See Code of Alabama 1975 §37-2A-1-11, as amended (the "CRA").

exercise jurisdiction over CMRS providers for Universal Service purposes.³ Just as in Alabama, Alltel noted that the Florida Commission did not have jurisdiction over CMRS providers for such purposes prior to the enactment of the cited Florida statute. On or about April 26, 2007, Alltel provided as supplemental authority an April 3, 2007 Order of the Florida Public Service Commission adopting the foregoing logic of the Florida staff and finding that the Florida Commission could indeed exercise jurisdiction over wireless carrier ETC matters based on the language of the cited Florida statute.⁴

II. FINDINGS AND CONCLUSIONS ON RECONSIDERATION

We have again reviewed the arguments of Alltel regarding the jurisdiction of the Commission over CMS providers for purposes of administering federal Universal Service requirements. We herein reaffirm our previous determination that no provision of Alabama law, including Code §37-2A-7, provides the Commission with jurisdiction over CMRS providers or any other provider of CMS with respect to Universal Service matters. Although §37-2A-7 does provide the Commission with broad jurisdiction over telecommunications carriers for purposes of administering federal Universal Service requirements, a closer review of the definitions and scope of the CRA reveals that providers of CMRS service such as Alltel and providers of other commercial mobile services do not meet the CRA's definition of a telecommunications carrier and are thus excluded from the coverage of the CRA.

In particular, §37-2A-5 of the CRA provides that only incumbent local exchange carriers, local exchange carriers and interexchange carriers may elect to be regulated under the CRA. The definitional provisions of the CRA found at §37-2A-2 thereof further specify that for purposes of the CRA, telecommunications carriers shall be treated as subject to the CRA only to the extent that they are engaged in the provision of "telecommunications service." The

³ See Florida Statutes at §384.001.

⁴ In Re: *Petition of Alltel Communications Inc. for Designation as an Eligible Telecommunications Provider*, Docket No. 060682-TP, Order No. PSC-07-0288-PAA-TP (Florida Public Service Comm'n, April 3, 2007).